

MINUTES

Board of Forestry Meeting

Monday, January 31, 2011

Teleconference to: Anchorage, Juneau, Fairbanks, Ketchikan, and Petersburg, Alaska

Call to Order and Roll Call. Chairman Maisch called the meeting to order from Fairbanks at 1:10 p.m. Juneau, Anchorage, Ketchikan, and Petersburg teleconference sites were connected. All board members were present by teleconference: Rob Bosworth (Juneau), Jeff Foley (Anchorage), Erin McLarnon (Anchorage), Matt Cronin (out-of-state), Wayne Nicolls (Juneau), Mark Vinsel (Juneau), Ron Wolfe (Juneau), and Eric Nichols (Ketchikan).

Public Meeting Notice. The meeting was noticed by issuing public service announcements and press releases, mailing announcements to interested parties, and posting a notice on the state and Department of Natural Resources (DNR) websites. *(See handout)*

Approval of Minutes. The Board reviewed and unanimously approved the December 13-14, 2010 minutes with no changes beyond those submitted prior to the meeting. *(See handout)*.

Approval of agenda. *(See handout)* The agenda was unanimously approved with no changes.

Public comments

- Thomas Deerfield, Dalson Energy, read a letter from the Alaska Power & Telephone Company (AP&T) regarding a proposed biomass combined heat and power (CHP) project for Tok *(see handout)*. AP&T services Tok, Tetlin, Tanacross, and Dot Lake. They propose a two megawatt electrical facility in Tok powered by local wood chips to offset imported diesel fuel. The initial feasibility study and resource assessment were positive. An “investment-grade” feasibility study and preliminary design are the next step. The project is estimated to be an \$18 million turn-key facility with a less than nine-year payback period at current diesel prices. Project construction will support 40-50 jobs and create 15-20 long-term jobs. The project requires a long-term feedstock supply of about 25M green tons/year to justify investment. A long-term contract is necessary to confirm viability. Diesel costs are escalating. There are many benefits of using a local feedstock and creating a sustainable market for non-commercial forest biomass that is also a hazardous fuel.
- Buck Lindekugel, Southeast Alaska Conservation Coalition (SEACC) attorney, spoke in support of House bills 97 and 91. He said that protecting infrastructure is key, and FRPA doesn’t do a sufficient job. Regarding SB44/HB105, his main concern is that logging is the main priority for the Southeast State Forest; community use is secondary. That creates an imbalance. Alternatives could be to balance the State Forest additions with state parks or to remove parcels with important fish and wildlife habitat from the bill. The Hook Arm and Rowan Bay parcels are of particular concern – all of the Hook Arm parcel and 80% of the Rowan Bay parcel is old growth. Those parcels are remote and timber will be exported which exports jobs and fish and wildlife resources supported by the old growth habitat. Alaska statutes require a report with a preliminary forest inventory for State Forest proposals. The DNR briefing packet only includes parcel acreage – Lindekugel had to go to other sources for more information. Regarding the public notice for the Board meeting, the Public Service Announcement didn’t include the call-in number – people couldn’t attend if they were not at one of the official meeting sites.

Freeman noted that several people called the information number provided and were given a call-in number if they couldn't attend one of the sites.

- Dave Beebe from Petersburg spoke as an individual in support of HB91. He asked the Board to reconsider deferring landslide zoning to municipalities. The municipalities don't have the necessary expertise to judge these hazards for themselves. Alaska is conspicuous for being among the last western states not to have a forest practices standard for harvest on unstable slopes that could be a threat to public safety. The Board has the authority and stands as the gatekeeper to protecting public safety with respect to timber harvest on unstable slopes.
- Suzanne West and Ed Wood from Petersburg spoke as individuals in support of HB91. They read and submitted the following comments. Their comments are quoted as read (*see handout*).

"HB 91 is the direct result of the December 12, 2005 Trust Land Office planned timber harvest in Petersburg in a well-documented landslide area."

"It is also the direct result of three years of Board of Forestry meetings in which public safety related to logging in steep, unstable, inhabited forested areas was the topic of discussion. The Board of Forestry even formed their Landslide Science & Technical Committee to scope out and map unstable areas, inhabited or accessible to the public across Alaska; and to update their Best Management Practices related to fish habitat and water quality."

"As per the Board of Forestry Minutes for February 12-13, 2008, on Page 9, questions raised at the October 9, 2007 Board meeting included: "Question No. 2: Can a consideration of public safety be added to the Act or regulations?" Per consultation with the Attorney General's Office, adding standards for public safety would require a statutory change to the Forest Resources & Practices Act. Regulations on public safety could not be adopted without a change to the Act."

"As per the Board of Forestry Minutes for March 17-18, 2010, the Minutes read: "DOF consulted with the Attorney General's office, who advised us that public safety could be added to one section of the FRPA, e.g., AS 41.17.060(B) (5) without requiring that public safety be considered under the Act's other provisions."

"The final result of all of this time and effort was that the Board abdicated its responsibilities to the public and its authority to manage timber harvests within inhabited areas to local zoning ordinances. As a result, Alaska's citizens wrote a bill amending AS 41.17.060(B) (5) to include public safety provisions for those inhabitants living or transiting through Alaska's steep and unstable forested regions, which Representative Peggy Wilson found credible enough to sponsor and introduce."

"And oh, by the way, there is still no Trust land exchange. They announced at their October

28, 2010 Resource Management Committee meeting a forthcoming five-year timber harvest plan which includes the land exchange parcels, so the need for legislation addressing “public safety” will be as pertinent now as when this entire process began.”

“I support House Bill 91.”

- Scott Hahn, Petersburg city manager reported that Petersburg is close to forming a borough, and is concerned about how SB 105/HB44 will affect the amount and quality of land available for future borough land selections. Regarding HB91, he said that the Petersburg City Council has supported efforts to provide safety on high-sloped areas. He will have to learn more about the new section 6 [addition to AS 41.17.060(b)], but other sections seem in line with what the city council would support.
- Paul Slenkamp, Forester for the Alaska Mental Health Trust, spoke in opposition to HB91. The Board spent 2-1/2 years working through this issue and had the support of the Mitkof Highway Homeowners Association until recently. The bill has some inconsistencies like the 45% grade standard and restrictions within ½-mile of roads. There is no provision for what happens if there are conflicting geologist reports as occurred with the Mental Health Trust parcels on Mitkof Island. There is no ability for on-site inspections a half-mile from the roads. This bill would raise operating costs which conflicts with FRPA requirements to consider economics. This bill would be a taking and could negatively affect a land exchange which the Trust is continuing to try to make happen.
- Wayne Weihs spoke as an individual concerned with expansion of the Southeast State Forest. Despite the priority for local harvest, state timber usually goes for export. When logs go out on log ships we’re exporting jobs and resources that could be used locally. The state website regarding this bill doesn’t talk about banning export, but talks about supporting local communities – it’s a hypocrisy.
- Maisch read a letter from Larry Mayo into the record (*see handout*): Regarding HB91, the wording in Section 1(b) should be expanded to include “businesses, public facilities, roads, and private residences” to define “human habitation”. He has studied Doug Swanson’s research and supports his findings.

Matt Cronin signed off

2011 legislation

SE State Forest additions (HB105/SB44). Chris Maisch (*see handouts*) explained that this bill builds on the 2010 legislation that established the SE State Forest (SESF) with 20 parcels. This bill was introduced by the Governor. It has been referred to the Resource and Finance committees in both houses, and the Governor has requested committee hearings. It would add 23,181 acres in 23 parcels to the SESF. The primary intent is to support the timber industry and Southeast communities. Land proposed for addition to the SESF was identified in the Southern Southeast and Central Southeast state area plans as General Use land with forest management intent. Five parcels were previously included in the University land settlement bill – Thorne Bay South, Port Dolores, Hook Arm, Leask Cove, and Earl West Cove. All this land is state land, no land

exchange is involved. State statutes require that a forest management plan be adopted for each State Forest that would be more detailed than the area plans. Management plans allow the agencies to take a closer look at individual parcels. Habitat, recreation, and multiple use are important to State Forests.

Regarding municipal entitlements, the Wrangell Borough was forming during deliberations on the original SESF bill, so the Wrangell Borough was grandfathered in with the authority to select borough entitlement land from the State Forest. Other future boroughs were also grandfathered in for calculation of “vacant, unappropriated, unreserved” land to determine the acreage of the borough entitlement. This prevents reductions in the size of new boroughs’ entitlements, but it excludes new boroughs from selecting lands designated as part of the State Forest.

Maisch will meet in Juneau with the Wrangell Borough regarding their land selections this week. He expects some borough parcels to come out of the SESF established last year.

He appreciated the comments from Petersburg, and apologized that the Division of Forestry hasn’t been there yet to discuss the legislation. The Division has received support letters for HB 105/SB 44 from the City of Coffman Cove, Resource Development Council, and Alaska Forest Association. The Southeast Conference and the Alaska Society of American Foresters are considering letters of support.

Maisch noted that concerns were previously expressed regarding the Neets Bay parcel due to the hatchery. Discussions are ongoing to make sure their interests can be protected in the State Forest planning process.

Nichols reported that he was in a Chamber of Commerce meeting with Mike Round from the Southern Southeast Regional Aquaculture Association and they still have some concerns. Maisch said there is ongoing dialogue with them. Vinsel appreciated that they are speaking directly with Maisch. Maisch said that the next meeting of their board is scheduled for March. Vinsel has sent maps to their member groups. The United Fishermen of Alaska (UFA) will meet February 15-17 and hope to put this on the agenda for that meeting; Vinsel will not take a position until after that meeting. Maisch, noted that he had also talked with Bruce Wallace and would be willing to come to the February UFA meeting to do a presentation in person or by phone.

Wolfe commented that there is public confusion from some people. Are the proposed State Forest additions already state lands? Maisch said they are all state conveyed land except Hook Arm which is at the top of the conveyance priority list. Wolfe stated that Sealaska may have an issue with Hook Arm. The rest is already state land, and that’s noteworthy.

Wolfe emphasized to the Board and public that Sealaska disagrees that export logs take Alaskan jobs away. A Sealaska study showed that the number of jobs/MMBF created for export logs is very close to that for local processing – the study is available on Sealaska’s website. Also, export jobs are often in very rural areas like Hydaburg that experience high unemployment. These jobs are necessary for those local economies. Requiring primary manufacture essentially requires that people move to locations that have sawmills, and we don’t support that. The Division has done a good job of supporting local mills, but round log export is not a bad thing, it is quite helpful.

Bosworth said that environmental groups use several different approaches to this type of land use question, so he can't give a comprehensive presentation representing all groups. However, there are methods being used to answer the question before us – is there a potential conflict between forest management and the classification for these parcels and conservation and biological values. The issue is to determine where that conflict exists across the landscape. That's what The Nature Conservancy and Audubon do – they put together a data set that gets to this question of whether there is conflict, and if there is, are there other alternatives or mitigation actions that could be covered in decision-making. The TNC-Audubon maps have been used extensively by conservation groups and others, and they could help us here. He asked a TNC staff member to look at the SESF parcel maps compared to the TNC-Audubon maps. There are some caveats – not all conservation groups have the same opinion on every issue – they have different priorities and perspectives, and Bosworth can't represent all the groups. He would be happy to come back and review other public comment that comes in. In reviewing the maps, TNC found that there really is not an area in the 23 parcels that is identified as “high conservation value.” Very likely these are areas that have been roaded, although that may not be the case everywhere. In the analysis they are not in conflict with areas of high biodiversity value. There will probably be other legitimate ways to look at the maps and data. By and large the TNC-Audubon maps are a useful tool. Maisch said that he was glad TNC has already done a side-by-side comparison.

McLarnon spoke on behalf of recreation seat on the Board. Recreation groups in the MatSu Valley see the creation of State Forests as positive for recreation activities. She values the Southeast comments on these parcels. McLarnon would like to see a State Forest to protect recreational values. In the MatSu, recreation groups had conflicts over one forestry area, and when they started working together with the Division of Forestry we worked that out. Without a State Forest there's a good chance recreation lands will be turned into a tax base and developed, and that reduces recreational opportunities.

Nichols reiterated that the proposed parcels are designated General Use lands, and harvesting is permitted under the current designation. He is surprised by the environmental group comments – this bill keeps these lands in public ownership and not disposed for development. He would think they would want these areas protected as forest land long-term.

Nicolls said that the discussion keeps focusing on a narrow area regarding employment and export vs. domestic processing. We're ignoring the long-term benefits, including revenue and employment with lands in State Forests. Logging and shipping jobs are a single time of activity. We're ignoring that with State Forests like the Tanana Valley State Forest there are other employment benefits beside logging. Maisch noted that in the Interior biomass development has been a recent economic benefit. Nicolls added that as the lands stand now in state ownership they could be logged at any time, but in a State Forest that wouldn't be the end of their use to the state.

Wolfe observed that in the last State Forest bill, the Division noted that dedicated State Forest lands provide more justification for thinning and other silvicultural treatments. Maisch agreed that it's hard to invest in long-term management activities, e.g., thinning, without a long-term dedication to forest use. Thinning also speeds the transition to young-growth harvesting. Right now we're not willing to make thinning investments because boroughs could select lands away. Investment in roads and bridges is also an issue – the state could invest in more permanent structures if there is a state forest.

Regarding Nichols' comment, Bosworth added that stable long-term management is a benefit of legislative designation of these parcels. The benefit for thinning and the kind of management that is more apparent in the modern context -- that's why I can support the bill. Masich commented that the current annual allowable cut in Southern Southeast is about 8.5 MMBF. As we move into young-growth management, we could be able to double that figure which allows the state to help provide a more consistent supply of wood and diversify the wood basket in Southeast, not remain overdependent on federal land.

Vinsel asked whether a mid-size mill could qualify for lumber grading to produce wood that could be used for local houses. Maisch said that the feasibility of grading depends on the market the mill is in and the owners' objectives. A mid-size mill would be similar in size to Viking Lumber Company. Alaskan grade stamps have been developed, but there are high costs associated with grading in Alaska.

Maisch also responded to the public comments wanting restriction of round log export. He explained that states cannot restrict round log export due to the federal Interstate Commerce Clause. Alaska has used negotiated sales to encourage local processing, but can't prohibit export. In addition, one school of thought suggests that it is beneficial to have logs go to their highest market.

Public safety and FRPA (HB 91). Maisch noted that the Board is familiar with the process that we've used to consider this issue.

Freeman provided an overview of the bill. HB 91 would add three new subsections to FRPA in AS 41.17.060(b). All provisions of the bill would apply to state, municipal, private, and trust-owned forest land. The additions would:

- Require that "threats to public safety" within ½-mile of a public road or adjacent to human habitation be prevented or minimized;
- Require DN R to set "strict safety standards" for timber operations on slopes >45% near human habitation, and lists specific factors to consider in developing the standards; and
- Require that DOF notify "affected property owners" and "local governing bodies" of potential hazards of timber operations on slopes >45%.

DNR is reviewing the bill in consultation with the Attorney General's Office. DNR recognizes that there has been a long process to assess the extent of public safety issues and landslides with a Science & Technical Committee, and that the Board has discussed public safety and landslide issues at 10 meetings over the last three years. In addition to the issues raised in those discussions, DNR notes that a number of terms in the bill are vague and would need to be defined in regulation, including "threats to public safety," "affected property owners," "in or near," and "local governing bodies." What level of threat is addressed, and are there threats to public safety other than landslides that the bill intends to cover? Do "local governing bodies" address entities other than municipalities? DNR also notes that the slope standard in the bill differs from that recommended by the S&TC.

The department also notes that language in the bill interacts with several other sections of FRPA dealing with “public resources” in ways that may require clarification through the courts. These include:

- AS 41.17.080(d) requires that DNR avoid adopting regulations that “increase operation costs without yielding significant benefits to *public resources*.”
- The FRPA process is not a permit process. Instead, it requires agency review of a Detailed Plan of Operations (DPO) on private, municipal, and trust land. Under this process operations may proceed 30 days after submittal of a DPO unless DNR issues a stop work order. (AS 41.17.090(e)). A stop work order may only be issued for activities that would violate FRPA or its regulations *and* if significant harm to *public resources* is likely to occur if work is not halted. Also, the provision to notify landowners of “threats to public safety” is a different notice process than the DPO process in terms of who is notified, and what analysis is required by agencies. It might necessitate contracting or geotechnical experts to do this analysis, and could affect timelines for DPO review.
- AS 41.17.900(b) says that the degree of *resource protection* on federal land may not be less than that for state land.

Maisch said that the Division will develop an internal paper for the Commissioner’s review and discussion with the Attorney General’s Office. DNR hasn’t taken a position on the bill yet, but Maisch expects that there will be a DNR position in the future.

McLarnon asked about the bill’s status. Freeman said that it has been referred to the House Resources and Finance committees; no hearing is scheduled yet in the House Resources Committee. Nichols asked whether there is any expectation of a companion bill in the Senate. Maisch said that none is known. Lindekugel said he is not aware of HB91 being introduced in Senate.

Wood asked for a copy of Freeman’s presentation. Maisch said that the Division will send him the minutes.

Wolfe said that at the next Board meeting, the state may have a position on this bill. He expressed grave concern over the bill -- it flies in the face of the state FRPA process since 1990. This is a complete breach of what we’ve worked at for 20 years.

Freeman noted that DNR put together a timeline of the process and will provide it to the Commissioner’s Office.

Nichols asked whether DNR wants a position from the Board. Maisch said that we don’t expect that today, but welcome Board input. Nichols asked whether a Board position on the bill can be put on the agenda for the March-April meeting. Maisch said that it certainly can.

Foley recollected that the Board has never been comfortable assuming responsibility for public safety under FRPA. Rather, the FRPA authority isn’t consistent with including public safety. He recognizes the concerns of those supporting the bill, but only if this bill moved forward would the Board be required to offer an opinion. Based on Freeman’s comments, he doesn’t see how the Legislature could pass a bill without a lot more work, and doesn’t see the need to provide an opinion on the bill at this time.

Nichols stated that Wilson's bill also raises questions on DNR's ability to regulate this. Maisch agreed, and noted that the Attorney General's Office is also looking at questions raised by the bill.

Wolfe had to leave, and said he appreciated the meeting.

Invasive species coordinator (HB 97) & council. Marty Freeman reported that HB 97, a bill to extend the DNR invasive species coordinator position was introduced by Rep. Johnson. Representatives Stolze, Gruenberg, and Kerttula are co-sponsors. The bill has been referred to the House Resources and Finance committees, in that order. A hearing date has not yet been set.

This bill would extend legislation passed in 2008 that established a state coordinator for "noxious weed, invasive plant, and agricultural pest management and education" in the Department of Natural Resources. With respect to noxious weeds, invasive plants, and agricultural pests, the coordinator oversees enforcement of state statutes and regulations, develops a strategic plan for their control, designs pest management area and integrated plant and pest management programs, and maintains a database, provides educational material. The coordinator also regulates and controls entry into Alaska of seeds, plants, and horticultural products. Each state agency must cooperate with the coordinator, who coordinates with the Cooperative Extension Service, Alaska Association of Conservation Districts board of directors, and ADF&G.

If HB 97 is not enacted, the bill establishing the coordinator position would expire on June 30, 2011. The incumbent coordinator, Gino Graziano, is in the Division of Agriculture.

Graziano added that the draft strategic plan is out for public review and comment on the DNR website. He has also looked at regulations on invasive weeds and agricultural pests, and an internal draft is now in the Commissioner's Office for review. The strategic plan and regulations should help address DNR's activities on invasive species, including forest pests.

Vinsel asked whether what DNR is covering here covers the gamut of what would affect forests? There are other issues for fisheries, but they may not affect forests. Maisch said that he had not yet read the strategic plan. He noted that the state Division of Forestry and US Forest Service do have an active joint statewide forest health unit, including Trish Wurtz who did a presentation to the Board last summer. The unit keeps the Division informed on terrestrial forest pest issues, and the entomologists in the units do the same for insects. The problem is catching problems soon enough to do effective control. That's the bigger issue – finding problems soon enough to respond effectively. Lower 48 foresters have more problems to report, but there are increasing concerns in Alaska, too.

Board comments

McLarnon thanked the Board for being on-line on short notice. Appreciated all the public comment – very informative.

Nichols said that HB 91 sure looks like it circumvents the Board. We need to dedicated time to this – we spent three years on this, and now this is an effort to try to put something through in a different manner. He is highly concerned.

Nicolls apologized for the cell phone interruption – he just received word that his daughter was successfully evacuated from Cairo.

Foley, Bosworth, and Vinsel had no additional comments.
Wolfe and Cronin had signed off

Meeting adjourned: 2:55 p.m.

Handouts

- Draft Agenda
- Public notice
- Draft minutes of December 13-14, 2010 Board of Forestry meeting
- House Bill 91 – Regulatory and administrative standards for managing forest resources
- House Bill 105 – Southeast State Forest
- Proposed State Forest additions vicinity map
- Southeast State Forest proposed additions – parcel maps
- Public briefing: HB 105/SB 44
- House Bill 97 – Extending a provision relating to noxious weed, invasive plants, and agricultural pest management and education
- Letter from AP&T to the Board, January 27, 2011
- Public comment to the Board of Forestry – Support of House Bill 91 by Suzanne West
- Letter from Larry Mayo to the Board regarding HB 91

Attendance

Petersburg

Dave Beebe, (traveling)
Scott Hahn, Petersburg City Manager
Dave Holmes
Matt Liechtenstein, KFSK
Nancy Strand, Petersburg City Council
Suzanne West
Ed Wood

Anchorage

Thomas Deerfield, Dalson Energy
Marty Freeman, DNR Division of Forestry
Gino Graziano, DNR Division of Agriculture
Devany Plentovich, AEA
Rick Rogers, DNR Division of Forestry

Fairbanks

Mark Eliot, DNR Division of Forestry

Juneau

Kevin Hanley, DEC
Brian Kleinhenz, Sealaska
Buck Lindekugel, Sealaska
Kyle Moselle, ADF&G
Joel Nudelman, DNR Division of Forestry
Jason Oakley
Pamalyn Duvall, Office of Rep. Wilson

Ketchikan

Clarence Clark, DNR Division of Forestry
Mike Curran, DNR Division of Forestry
Larry Jackson, Tongass Forest Enterprises
Pat Palkovic, DNR Division of Forestry
Alan Rockwood
Paul Slenkamp, Alaska Mental Health Trust
Greg Staunton, DNR Division of Forestry
Wayne Weihing

Metlakatla

Janelle Winter, Metlakatla